

REMARKS

In the Office Action mailed on March 7, 2006, the Examiner rejected claims 1-13 and 16-18 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,385,970 to Kuras et al. in view of U.S. Patent No. 5,468,126 to Lukich et al.; and indicated that claims 14 and 15 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicants thank the Examiner for the indication of the allowable subject matter of claims 14 and 15. Claims 1-18 remain pending in this application.

Applicants respectfully traverse the Section 103(a) rejection of claims 1-13 and 16-18 as being unpatentable over Kuras et al. in view of Lukich et al. In order to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a), three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or combine the reference teachings in a manner resulting in the claim invention (see M.P.E.P. § 2143.01). Second, a reasonable expectation of success must exist (see M.P.E.P. § 2143.02). Finally, the prior art reference or references, taken alone or in combination, must teach or suggest every element recited in the claims (see M.P.E.P. § 2143.03).

The Examiner has not established a *prima facie* case of obviousness with respect to the rejection of claims 1-13 or 16-18 for at least the reason that neither Kuras et al. nor Lukich et al., taken alone or in combination, discloses or suggests every claim element. For example, independent claims 1 and 16, from which claims 2-9 and

17-18 ultimately depend, each recite a combination of elements including, among other things, a control system operable to limit desired transmission load applied to a driven member of a transmission to prevent the power source from operating outside of the desired operating range. In addition, independent claim 10, from which claims 11-13 depend, recites a method including, among other things, limiting the desired load applied to a driven member of the transmission to prevent the power source from operating outside of the desired operating range. Neither Kuras et al. nor Lukich et al., taken alone or in combination, discloses or suggests at least these claim elements.

The Examiner admits that Kuras et al. does not disclose a control system operable to limit the desired transmission load applied to a driven member of a transmission to prevent the power source from operating outside of the desired operating range. (See Office Action mailed 03/07/2006, pages 2-3). In an attempt to remedy this deficiency of Kuras et al., the Examiner suggests that it would have been obvious to combine the control system of Lukich et al. with the system of Kuras et al. to arrive at Applicants' claimed invention. Applicants respectfully disagree.

Lukich et al. discloses a control system that adjusts an engine operation in response to an anticipated increase in load by injecting additional fuel into an internal combustion engine, thereby providing a power boost to counteract the anticipated increase in load to prevent engine "lug". It does not, however, disclose or suggest limiting the desired transmission load applied to a driven member of a transmission to prevent the power source from operating outside the desired operating range. The Examiner refers to lines 35-40 of column 4 of Lukich et al. as allegedly teaching limiting

the desired transmission load applied to the driven member. (See Office Action at page 3). Applicants have not found any such teaching in Lukich et al.

In fact, Lukich et al. suggests that certain pump parameters are input to the engine feedforward control to provide “anticipatory signals” to the engine speed governor that the hydraulic load is increasing above the maximum power output of the engine. (See Lukich et al. at column 4, lines 35-40). The engine speed governor, in turn, responsively modifies the fuel quantity injected in an internal combustion engine. (See Lukich et al. at column 4, lines 16-18). However, adjusting engine operation by modifying the amount of fuel injected to the internal combustion in anticipation of an increase in load does not constitute limiting the transmission load applied to the driven member of the transmission. Thus, contrary to the Examiner’s assertions, Lukich et al. fails to disclose or suggest at least this recitation of claims 1, 10, and 16.

Because neither Kuras et al. nor Lukich et al., taken alone or in combination, discloses or suggests every element of claims 1, 10, or 16, and dependent claims 2-9, 11-13, and 17-18, no *prima facie* case of obviousness has been established with respect to the rejection of these claims. Accordingly, the 35 U.S.C. § 103(a) rejection of these claims is improper and should be withdrawn.

In view of the foregoing, Applicants respectfully request reconsideration and reexamination of this application and timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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Dated: May 23, 2006

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